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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,572	02/24/2004	Nicolas Albisetti	05725.1276-00	1273
22852 7590 02/23/2007 FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER NGUYEN, TUAN N	
			ART UNIT 3751	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/23/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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<b>Office Action Summary</b>	Application No. 10/784,572	Applicant(s) ALBISETTI ET AL.	
	Examiner Tuan N. Nguyen	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 November 2006.  
 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-38 is/are pending in the application.  
     4a) Of the above claim(s) 3,5,7-9,15-20,22,23,25,27,29-35 and 38 is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1,2,4,6,10-14,21,24,26,28,36 and 37 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Response to Arguments***

1. Applicant's arguments filed 11/30/06 have been fully considered but they are not persuasive. With respect to applicant's argument to claim 1, claim 1 does not offer any specific structure to the first and second portions of the applicator to distinguish from that of Duqueroie, which is reasonably interpreted of first portion 34 and second portion 33 that is distinct from the first portion since it is smaller in diameter. The edge between portions 34 and 33 abuts edge 21a of case 20 of Duqueroie to restrict axial movement. Furthermore, second portion 33 contains studs 81 to contribute to rotational movement, which reasonably meet the claimed limitation. With respect to applicant's argument to claim 36 that the applicator 30 of Duqueroie does not include a screw thread configured with the screw thread of the case, the examiner disagrees because the case 20 of Duqueroie has threads 80 where the studs 81 of the applicator 30 are threadably engaged (see col. 7, line 44+ of Duqueroie). The studs 81 are arranged circumferentially about portion 33 in a spiral arrangement to engage threads 80 of case 20; even though the studs are not a continuous spiral thread but are a broken spiral segment thread. It is reasonable from the context of the Duqueroie disclosure to interpret the applicator 30 to have a screw thread (see col. 7, line 44+ of Duqueroie and col. 9, lines 45-50). Therefore, the prior rejections as set forth in the previous office action are maintained.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

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art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1, 2, 4, 6, 10-14, 24, 26 and 28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. While the specification in paragraph [064] mentioned the applicator portion, it fails to have support for an applicator including "a first portion configured to contribute to restricting axial movement of the applicator away from the case" as argued in the fourth paragraph in the remarks section on page 10 with emphasis to the language "away from." Therefore, such a newly limitation is considered as new matter.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1, 2, 4, 6, 10-14, 24, 26, 28 and 36 are rejected under 35 U.S.C. 102(e) as being anticipated by Duqueroie et al. (hereinafter Duqueroie).

In regard to claims 1, 10, 28 and 36, Duqueroie discloses a device for applying a product as claimed comprising a container (40) configured to contain a product; a case (20) comprising a compartment configured to receive the container, wherein the case defines an opening (22), and wherein the container is configured to be moved relative to the case between a first angular position in which product in the container is accessible via the opening, and a second angular position in which product in the container is inaccessible via the opening; and an applicator (30) configured to be releasably coupled to the case, wherein the applicator comprises a first portion (34) configured to contribute to restricting axial movement of the applicator with respect to the case, and a second portion (33) distinct from the first portion, the second portion being configured to contribute to rotationally coupling the applicator to the container so that movement of the applicator causes movement of the container between the first and second angular positions.

In regard to claim 2, the second portion comprises at least one striation defined between projections (81).

In regard to claim 4, the second portion comprises at least two striations defined between projections (81) arranged consecutively along a radial arc defined at a periphery of an outer perimeter of the applicator.

In regard to claim 6, the second portion comprises four striations defined between projections (81) distributed along an outer perimeter of the applicator.

In regard to claim 11, the opening is a first opening, wherein the case defines a second opening (21b), and wherein the container is configured to be inserted into the case through the second opening. In regard to claim 12, the case defines a third opening (21a) distinct from the first and second openings, and wherein the applicator is configured to be inserted into the case through the third opening. In regard to claim 13, the second and third openings are located at opposite longitudinal ends of the case.

In regard to claim 14, the second portion is located along the applicator such that the second portion rotationally couples the applicator to the container via (50) when the first portion restricts axial movement of the applicator with respect to the case.

In regard to claim 24, the container comprises at least one portion (about 45, 68) configured to restrict axial movement of the container with respect to the case, the at least one portion of the container being configured to permit rotation of the container in the compartment.

6. In regard to claim 26, the container comprises a portion (about 61) configured to limit rotation of the container in the case.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 21 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duqueroie in view of Dumler et al., (hereinafter Dumler).

Although the threads arrangement (80,81) is not as claimed, attention is directed to the Dumler reference, which teaches an analogous device (Fig. 4) for applying a product having the threads arrangement (about 21", 22") as claimed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the threads arrangement of Duqueroie with a thread arrangement as, for example, taught by Dumler, where in so doing would involve mere substitution of one functional equivalent connection means for another and the selection of any of these known equivalents to connect an applicator and a case would perform equally well on the Duqueroie device.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

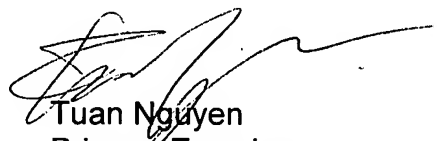
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 571-272-4892. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tuan Nguyen  
Primary Examiner  
Art Unit 3751

TN